

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROBERT L. ATKINSON,	:	Case No. 3:22-cv-192
	:	
Plaintiff,	:	District Judge Thomas M. Rose
	:	
vs.	:	Magistrate Judge Kimberly A. Jolson
	:	
STATE OF OHIO, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ENTRY AND ORDER OVERRULING PLAINTIFF’S OBJECTIONS (DOC. NO. 23) TO
THE MAGISTRATE JUDGE’S ORDER AND REPORT AND RECOMMENDATION;
ADOPTING REPORT AND RECOMMENDATION (DOC. NO. 21); DISMISSING,
WITH PREJUDICE, PLAINTIFF’S SECOND AMENDED COMPLAINT (DOC. NOS. 19
AND 20); AND TERMINATING THIS CASE**

On December 2, 2022, for purposes of an initial screening of the Second Amended Complaint¹ under 28 U.S.C. §§ 1915(e)(2) and 1915A, Magistrate Judge Kimberly A. Jolson filed an Order and Report and Recommendation (Doc. No. 21) (the “Order and Report and Recommendation”). On December 14, 2022, Plaintiff Robert L. Atkinson (“Atkinson”) filed a document titled Habeas Corpus Petition Appeal (Doc. No. 23) (the “Objections”), which the Court construes as his objection to the Report and Recommendation.²

¹ The undersigned follows the Order and Report and Recommendation on considering the two documents filed as Doc. No. 19 and Doc. No. 20 together as Plaintiff’s Second Amended Complaint. (*See* Doc. No. 21 at PageID 461.)

² To the extent that the Court should instead construe the document as a notice of appeal, then the Court would strike the document. The Court previously directed the Clerk of Court to open a new case to be opened for Atkinson’s petition for writ of habeas corpus; the Clerk of Court opened the new case (Case No. 3:22-cv-236); and the Court specifically directed Atkinson to file any future motions and pleadings related to his habeas corpus action in that new case and warned him that any future filings relating to that habeas corpus action that are erroneously filed in this case would be stricken from the record. (*See* Doc. No. 10; Doc. No. 12.) The document filed on December 14, 2022 (Doc. No. 23) is the only document filed by Atkinson since issuance of the Order and Report and Recommendation, and the time to file objections has passed (*see* Doc. No. 21 at PageID 468). Fed. R. Civ. P. 72(b).

The Court has made a *de novo* review of the record in this case and a “*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). Upon said review, the Court finds that Atkinson’s objections (*see* Doc. No. 23) are not well-taken and they are **OVERRULED**. The Court **ACCEPTS** the findings and recommendations made by the magistrate judge, **ADOPTS** the Order and Report and Recommendation (Doc. No. 23) in its entirety, and rules as follows:

1. The Report and Recommendation filed on December 2, 2022 (Doc. No. 21) is **ADOPTED** in full;
2. The Court **DISMISSES WITH PREJUDICE** Plaintiff’s Second Amended Complaint (Doc. No. 19 and Doc. No. 20), pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, with the caveat that the dismissal should not be construed as precluding plaintiff from filing a habeas petition to the extent appropriate under the circumstances;
3. The Court **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a), that an appeal of this order would not be taken in good faith and therefore Plaintiff would be denied leave to appeal *in forma pauperis*; and,
4. The Court **DIRECTS** the Clerk of Court to terminate this action.

DONE and **ORDERED** in Dayton, Ohio, this Thursday, January 5, 2023.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE